In the Matter of

The *FINANCIAL INSTITUTIONS ACT*
(the "Act")
(RSBC 1996, c.141)

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

MAGDALENA MANDOCDOC GATUS
("Licensee")

ORDER

As Council made an intended decision on April 22, 2010, pursuant to sections 231 and 236 of the Act; and

As Council, in accordance with section 237 of the Act, provided the Licensee with written reasons and notice of the intended decision dated April 22, 2010; and

As the Licensee requested a hearing of Council's intended decision on May 11, 2010, and subsequently withdrew her request for a hearing on September 20, 2010;

Under authority of sections 231 and 236 of the Act, Council orders:

1. the Licensee is fined $2,500.00;
2. the Licensee to complete an Errors and Omissions course;
3. the Licensee to submit proof of Errors and Omissions coverage for each of the next three years, commencing on September 15, 2011;
4. as a condition of this order, the Licensee is required to complete the Errors and Omissions course by **December 30, 2010**. If the Licensee does not complete the course by this date, the Licensee's life insurance agent licence is suspended as of **December 31, 2010,** without further action from Council and the Licensee will not be permitted to complete any annual filing until such time as the ordered course is completed;

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5. as a condition of this order, the Licensee is required to pay the fine no later than **December 30, 2010**. If the Licensee does not pay the fine in full by this date, the Licensee's life insurance agent licence is suspended as of **December 31, 2010,** without further action from Council and the Licensee will not be permitted to complete any annual filing until such time as the ordered fine is paid in full.

This order takes effect on the **1st day of October, 2010.**

Barbara MacKinnon, CAIB
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

respecting

MAGDALENA MANDOCDOC GATUS
("Licensee")

INTRODUCTION

Pursuant to section 232 of the *Financial Institutions Act* ("Act"), Council conducted an investigation to determine whether there had been compliance by the Licensee with the requirements of the Act.

As part of Council's investigation, on March 22, 2010, an Investigative Review Committee ("Committee") met with the Licensee to discuss her failure to notify Council of the loss of mandatory errors and omissions insurance ("E&O") coverage within five business days of the loss of coverage and her failure to cease conducting insurance activities in accordance with Council Rule 7(11).

The Committee was comprised of one voting and two non-voting members of Council. Prior to the Committee's meeting with the Licensee, an investigation report had been distributed to the Committee and the Licensee for review. A discussion of this report took place at the meeting, where the Licensee was provided an opportunity to clarify the information contained in the report and to make further submissions. Having reviewed the investigation materials and after discussing the matter with the Licensee, the Committee made a recommendation to Council as to the manner in which this matter should be disposed.

A report setting out the Committee's findings and recommended disposition, along with the aforementioned investigation report, was presented to Council at its April 13, 2010 meeting. At the conclusion of its meeting, Council determined that the matter should be disposed of in the manner set out below.

INTENDED DECISION PROCESS

Pursuant to section 237 of the Act, Council must provide written notice to the Licensee of the action it intends to take under sections 231 and 236 of the Act before taking any such action. The Licensee may then accept Council's decision or request a formal hearing. This intended decision serves as written notice of the action Council intends to take against the Licensee.

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FACTS

Based on the information contained in the investigation report, Council made the following findings of fact:

1. The Licensee has been licensed as a life and accident and sickness insurance agent ("Life Agent") with Council since June 28, 2006.

2. With her first licence, the Licensee was provided notification that she had responsibilities under the Act and should visit Council's website or contact its office for copies of various publications, including Council Rules.

3. The Licensee held her Life Agent's licence with SMG Advisors Inc. until March 30, 2009.

4. Since March 30, 2009, the Licensee has operated and been licensed as an independent Life Agent.

5. The Licensee's E&O coverage was terminated on July 17, 2009, when she did not renew the coverage due to financial difficulties arising from her husband losing his job.

6. The Licensee did not see her E&O coverage as a high financial priority as, among other responsibilities, her son is attending school and she and her husband are providing financial assistance.

7. The Licensee failed to notify Council of the termination of her E&O coverage as required by Council Rules.

8. After being contacted by Council staff on September 8, 2009, and being advised that she was required to cease conducting insurance activities, the Licensee advised Council on September 15, 2009, that she had obtained E&O coverage.

9. The Licensee continued to conduct insurance activities and deal with inquiries from clients, which included requests for additional coverage, when she did not have E&O coverage.

10. The Licensee could not recall whether or not she specifically finalized any new business during the three months she was without E&O coverage. Subsequent to the Committee meeting, Council staff was advised by CF Canada Financial Group Inc. that the Licensee had submitted three insurance applications during the time she was without E&O coverage.

11. The Licensee was aware of the requirement to have E&O coverage, however, does not agree with Council Rule 7(11). It is her position that clients are not forced to purchase insurance and she should not be forced to purchase insurance when she acts in the best interests of her clients.

LEGISLATION

Council Rule 7(11) states:

(11) Effective January 1, 2006, unless otherwise determined by Council a licensee:
- (a) must maintain or be covered by E&O insurance, which extends to all activities as a licensed insurance agent, salesperson or adjuster, with:
  - (i) a minimum limit of $1,000,000.00 per claim; and
  - (ii) a minimum aggregate limit of $2,000,000.00;
- (b) who is a direct employee of an insurer is exempt from subsection (a) where:
  - (i) the licensee only sells the products of that insurer; and
  - (ii) the licensee provides certification from the insurer that:
    - (A) the licensee is an employee of the insurer;
    - (B) the company accepts responsibility for the licensee's activities as a licensee; and
    - (C) the company will respond to E&O claims against the licensee on the same basis as set out in subsection (a);
- (c) that is no longer insured as required under subsection (a) or (b) must:
  - (i) notify Council within 5 business days; and
  - (ii) immediately stop conducting any insurance activities;
- (d) will have the licence automatically suspended without Council taking any action, where the licensee remains uninsured for a period exceeding 30 calendar days; and
- (e) will have the licence suspended under subsection (d) automatically reinstated where:
  - (i) the licensee obtains the required E&O insurance within 30 calendar days from the date of the suspension; and
  - (ii) the licensee delivers to Council the required verification;

  otherwise the licence is terminated.

Section 231 of the Act
Part 7 – Administration of the Regulation of Financial Institutions
Division 2 – Insurance Council of British Columbia

Council may suspend, cancel or restrict licences and impose fines

(1) If, after due investigation, the council determines that the licensee or former licensee or any officer, director, employee, controlling shareholder, partner or nominee of the licensee or former licensee

- (a) no longer meets a licensing requirement established by a rule made by the council or did not meet that requirement at the time the licence was issued, or at a later time,
- (b) has breached or is in breach of a term, condition or restriction of the licence of the licensee,
- (c) has made a material misstatement in the application for the licence of the licensee or in reply to an inquiry addressed under this Act to the licensee,
- (d) has refused or neglected to make a prompt reply to an inquiry addressed to the licensee under this Act,
- (e) has contravened section 79, 94 or 177, or
- (e.1) has contravened a prescribed provision of the regulations,

then the council by order may do one or more of the following:

(f) reprimand the licensee or former licensee;
(g) suspend or cancel the licence of the licensee;
(h) attach conditions to the licence of the licensee or amend any conditions attached to the licence;
(i) in appropriate circumstances, amend the licence of the licensee by deleting the name of a nominee;
(j) require the licensee or former licensee to cease any specified activity related to the conduct of insurance business or to carry out any specified activity related to the conduct of insurance business;
(k) in respect of conduct described in paragraph (a), (b), (c), (d), (e), or (e.1), fine the licensee or former licensee an amount

(i) not more than $20 000 in the case of a corporation, or
(ii) not more than $10 000 in the case of an individual.

(2) A person whose licence is suspended or cancelled under this section must surrender the licence to the council immediately.

(3) If the council makes an order under subsection (1)(g) to suspend or cancel the licence of an insurance agent, or insurance adjuster, then the licences of any insurance salesperson employed by the insurance agent, and of any employees of the insurance adjuster are suspended without the necessity of the council taking any action.

(3.1) On application of the person whose licence is suspended under subsection (1)(g), the council may reinstate the licence if the deficiency that resulted in the suspension is remedied.

(4) If an insurance agent's licence or an insurance adjuster's licence is reinstated, the licences of any insurance salespersons or employees of the insurance adjuster who
(a) were employed by that agent or adjuster at the time of the suspension, and
(b) remain employees of that agent or adjuster at the time of reinstatement,
are also reinstated without the necessity of the council taking any action.

Section 236 of the Act
Part 7 – Administration of the Regulation of Financial Institutions
Division 3 – Hearings and Appeals

Power to impose conditions

(1) The commission, superintendent or council, depending on which of them has the power to make the order, give the consent or issue the business authorization, permit or licence may

(a) impose conditions that the person considers necessary or desirable in respect of
(i) an order referred to in section 235 (1),
(ii) a consent referred to in section 235 (2),
(iii) a business authorization,
(iv) a permit issued under section 187 (1), or
(v) a licence issued under Division 2 of Part 6, and

(b) remove or vary the conditions by own motion or on the application of a person affected by the order or consent, or of the holder of the business authorization, permit or licence.

(2) A condition imposed under subsection (1) is conclusively deemed to be part of the order, consent, business authorization, permit or licence in respect of which it is imposed, whether contained in or attached to it or contained in a separate document.

(3) Except

(a) on the written application or with the written permission of the holder, or
(b) in the circumstances described in section 164, 231 or 249 (1), a power of the commission, superintendent or council under this Act to impose or vary conditions in respect of
(c) a business authorization is exercisable only on or before its issue date, or
(d) a permit under section 187 (1) or a licence under Division 2 of Part 6 is exercisable only on or before its issue date with effect on and after that date.

ANALYSIS

Council found the above mentioned facts constituted a breach of Council Rule 7(11)(c)(i) and 7(11)(c)(ii) in that the Licensee failed to notify Council within five business days of losing E&O coverage, and failed to cease conducting insurance activities.

Council found the Licensee's breaches of Council Rule 7(11) were intentional, and she was not remorseful for her actions. Council found that the Licensee put her financial circumstances ahead of her clients' best interests by not renewing her E&O insurance. As a result, she exposed her clients to potential risk by conducting insurance activities without E&O coverage.

Council concurred with the Committee that the Licensee's argument that she was not aware of her responsibility to notify Council of the loss of E&O coverage was weak. She had a responsibility and obligation to be familiar with Council Rules, and govern her practice accordingly.

In considering the appropriate disposition, including the Committee's recommendation, Council took note of precedents related to breaches of Council Rule 7(11). In cases resulting in fines of $1,000.00 to travel insurance agencies, the actions of the licensees were found to have been unintentional and took place within the first 18 months of the travel industry having to obtain E&O insurance. In the additional case considered, Tomerro Group Enterprises Inc. and Bruce Thomas Brook, the nominee and sole licensee of a general insurance agency restricted to vehicle warranty insurance, had difficulties obtaining E&O coverage due to the nature of the business conducted and continued to operate knowing that E&O coverage was required. While the licensee in this case operated intentionally, there were mitigating circumstances in that the licensee had genuinely attempted to obtain the required coverage, however, encountered difficulties due to the restricted nature of the licence. In this case, the nominee was fined $1,500.00 and the agency was fined $1,000.00, for a total of $2,500.00.

Although cognizant of the Licensee's financial difficulties, Council found it did not mitigate her failure to comply with Council Rules. Council found a licensee who intentionally stops carrying E&O coverage in order to reduce expenses, and then claims no knowledge as to the notification requirements, warrants a significant penalty. Council was therefore of the position that in order to assess a reasonable penalty while providing a deterrent given the intent with which the Licensee acted and the potential risk to her clients, a substantive fine should be imposed.

INTENDED DECISION

Pursuant to section 231 and 236 of the Act, Council intends to order the following:

1. the Licensee pay a fine of $2,500.00, which must be paid within 90 days from the date of Council's final decision;
2. the Licensee complete an E&O course within 90 days from the date of Council's final decision;
3. the Licensee submit proof of E&O coverage for each of the next three years, commencing on **August 1, 2010**; and
4. as a condition of this decision, the Licensee is required to pay the above mentioned fine by **August 18, 2010**. If the Licensee does not pay the ordered fine by this date, the Licensee's licence is suspended as of **August 19, 2010**, without further action from Council.

The intended decision will take effect on **May 18, 2010**, subject to the Licensee's right to request a hearing before Council pursuant to section 237 of the Act.

RIGHT TO A HEARING

If the Licensee wishes to dispute Council's findings or its intended decision, she may present her case at a hearing before Council where she may be represented by legal counsel. Pursuant to section 237(3) of the Act, to require Council to hold a hearing, the Licensee must give notice to Council by delivering to its office written notice of this intention by **May 17, 2010**. A hearing will then be scheduled for a date within a reasonable period of time from receipt of the notice. Please direct written notice to the attention of the Executive Director.

If the Licensee does not request a hearing by **May 17, 2010**, the intended decision of Council will take effect.

Even if this decision is accepted by the Licensee, pursuant to section 242(3) of the Act, the Financial Institutions Commission still has a right to appeal this decision of Council to the Financial Services Tribunal ("FST"). The Financial Institutions Commission has 30 days to file a Notice of Appeal, once Council's decision takes effect. For more information respecting appeals to the FST, please visit their website at www.fic.gov.bc.ca/fst/ or contact them directly at:

Suite 1200 - 13450 102nd Avenue
Surrey, British Columbia
V3T 5X3
Telephone: 604-953-5300

Dated in Vancouver, British Columbia, on the **22nd day of April, 2010.**

For the Insurance Council of British Columbia

Gerald D. Matier
Executive Director

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